



Even if there is diversity of citizenship among the parties, there is no subject matter jurisdiction under 28 U.S.C. § 1332 if the claim does not satisfy the \$75,000 amount in controversy threshold.

Based on the information set forth above, it appears to a legal certainty that the claim is for less than the jurisdictional amount. Accordingly, this court lacks subject matter jurisdiction and the case should be dismissed. St. Paul v. Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289 (1938) (dismissal for failure to satisfy jurisdictional threshold appropriate when it appears “to a legal certainty that the claim is really for less than the jurisdictional amount”); See also Speilman v. Genzyme Corp., 251 F. 3d 1, 5 (1<sup>st</sup> Cir 2001) (once defendant challenges sufficiency of damage allegations, burden is on plaintiff to allege “with sufficient particularity facts indicating that it is not a legal certainty that claim involves less than the jurisdictional amount”) (quoting Dep’t of Recreation and Sports v. World Boxing Ass’n, 942 F. 2d 84, 88 (1<sup>st</sup> Cir. 1991).

WHEREFORE, the defendants request that this matter be dismissed for lack of subject matter jurisdiction.

Respectfully submitted



Paul R. Keane, BBO # 262880

Michael J. Keefe, BBO # 263751

Attorneys for the Defendants

Martin, Magnuson, McCarthy & Kenney

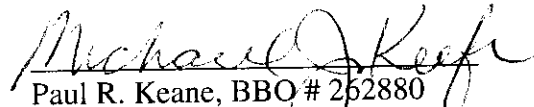
101 Merrimac Street, 7<sup>th</sup> Floor

Boston, MA 02114

617-227-3240

CERTIFICATE OF SERVICE

I, Michael J. Keefe, counsel for the defendants, hereby certify that on the 3rd day of February, 2005, I served the above document mailing a copy thereof, postage prepaid to Sal J. Germani, Esq., Germani & Germani, P.C., 50 Union Street, P. O. Box 2178, Attleboro, MA 02703.

A handwritten signature in cursive script, appearing to read "Michael J. Keefe", written in black ink.

Paul R. Keane, BBO # 262880

Michael J. Keefe, BBO # 263751

Attorneys for the Defendants

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DEC - 8 2003

SAL J. GERMANI  
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of Counsel  
VINCENT M. GERMANI  
DALE E. ROSE\*  
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\*MA & RIBA

John Chiappardi  
Claims Representative  
Atlantic Risk Management, Inc.  
P. O. Box 4001  
9 Old Kings Highway South  
Darien, CT 06820-4001

**RE: Insured: Joseph Eletto Transfer, Inc.    Our Client: Elizabeth Shields**  
**Claim #: 1-16987                                      Date/Loss: 06/25/03**

Dear Mr. Chiappardi:

We are enclosing copies of physical therapy records from Orthopedic Group, Inc. covering the period September 15, 2003 through October 2, 2003, along with the charges for these final treatments in the amount of \$704.00. Also enclosed is a copy of a bill for \$35.00 from Attleboro Radiology for services on June 25, 2003.

Total medical expenses to date are \$2,970.75.

Kindly review this claim and contact me once you have completed your evaluation.

Thank you.

Very truly yours,

GERMANI &amp; GERMANI, P.C.

Sal J. Germani

SJG/jog  
Enclosures

RECEIVED

SEP 23 2003

GERMANI & GERMANI, P. C.

ATTORNEYS AND COUNSELORS AT LAW  
50 UNION STREET  
P.O. BOX 2178  
ATTLEBORO, MA 02703

TEL: (508) 222-5858  
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September 17, 2003

John Chiappardi  
Claims Representative  
Atlantic Risk Management, Inc.  
P. O. Box 4001  
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Darien, CT 06820-4001

SAL J. GERMANI  
\_\_\_\_\_  
of Counsel  
VINCENT M. GERMANI  
DALE E. ROSE\*  
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\*MA & RI BAR

**RE: Insured: Joseph Eletto Transfer, Inc. Our Client: Elizabeth Shields**  
**Claim #: 1-16987 Date/Loss: 06/25/03**

Dear Mr. Chiappardi:

In response to your letter of September 4, 2003, we are enclosing herewith the following documents relative to the above-referenced claim:

Medical Records  
Medical Bills

Dr. Poggi makes the following diagnosis: Diagnosis #1: spondylolisthesis L5/S1 (traumatic); Diagnosis #2: lumbar strain. Left thoracic paraspinal strain.

I have enclosed one page of text regarding spondylolisthesis and trauma.

Ms. Shields is still undergoing physical therapy treatments. We will provide additional records when treatment has ended and we have received the remainder of her records.

As a reminder, we have not as yet been notified of your Insured's limits of liability coverage. Kindly advise.

Very truly yours,  
GERMANI & GERMANI, P.C.

  
Sal J. Germani

SJG/jog  
Enclosures